

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Richard and Patricia Martin,

Plaintiffs,

Civ. No. 10-3594 (RHK/FLN)

v.

ORDER

State Farm Fire and Casualty Company,

Defendant.

This matter is before the Court on Defendant's Motion for Costs Under 28 U.S.C. § 1919 (Doc. No. 59). Section 1919 provides that "[w]henver any action or suit is dismissed in any district court . . . for want of jurisdiction, such court may order the payment of just costs." This action having been dismissed on November 21, 2011, for lack of subject-matter jurisdiction, Defendant now invokes Section 1919 to request an award of nearly \$4,000 in costs.

As the text of Section 1919 makes clear, an award of costs thereunder is discretionary and should be granted only "if there is no justification for plaintiffs' pursuit of their case." Bollig v. Christian Cmty. Homes & Servs., Inc., No. 02-C-532-C, 2003 WL 23211142, at *3 (W.D. Wis. Oct. 27, 2003).¹ In the Court's view, Plaintiffs' claims here were not so lacking in merit that they were unjustified as a matter of law; indeed, the claims survived Defendant's initial Motion for Summary Judgment. Moreover, the

¹ Unlike costs under Federal Rule of Civil Procedure 54 and 28 U.S.C. § 1920, there exists no presumption that the prevailing party is entitled to costs under 28 U.S.C. § 1919. See, e.g., Ali v. Prestige Window & Door Installation, LLC, 626 F. Supp. 2d 1259, 1261 (S.D. Fla. 2009) (citations omitted).

jurisdictional question was a close one. Given Plaintiffs' difficulty assessing their damages, the Court does not believe they acted in bad faith in filing suit in this Court, rather than in state court. Based on the foregoing, and all the files, records, and proceedings herein, **IT IS ORDERED** that Defendant's Motion for Costs Under 28 U.S.C. § 1919 (Doc. No. 59) is **DENIED**.

Date: January 9, 2012

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge